

DECISION

12117 PLM-1
Mr. Schwimer

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-195923

DATE: November 26, 1979

MATTER OF: Donald L. Colbert - Retroactive Temporary
Promotion and Backpay

DIGEST: GS-13 employee performed duties of position which was subsequently classified as a GS-14 position. Claim may not be paid for the period prior to classification since decisions of Comptroller General hold that an employee is entitled to backpay and retroactive temporary promotion only if the detail is to an officially classified higher grade position. After the position was classified as a GS-14, employee was detailed to the position for 3 months. Claim may not be paid for this period since regulations and our decisions allow retroactive temporary promotion and backpay only after employee has been detailed to a higher grade position for over 120 days.

This action is in response to the appeal by Mr. Donald L. Colbert of our Claims Division Settlement Certificate Z-2812374, dated June 26, 1979, denying his [claim for a retroactive temporary promotion and backpay] for the period that he performed higher level duties. The question presented for our decision is whether Mr. Colbert has presented sufficient evidence to document the alleged detail to an officially established position.

Mr. Colbert was employed by the Department of the Air Force in San Antonio, Texas, as a Supervisory Electronics Engineer, GS-13, and he claims that he is entitled to a retroactive temporary promotion and backpay from January 7 to November 11, 1978, when he performed the duties of Chief, Engineering Division. The position was classified as a GS-14 on August 7, 1978, at which time Mr. Colbert was detailed into the position for a time not to exceed 60 days. The agency denied Mr. Colbert's claim for a retroactive temporary promotion on the grounds that Mr. Colbert was assigned to an unestablished position and, therefore, did not meet the eligibility requirements for a retroactive temporary promotion and backpay. Our Claims Division denied the claim for the period from January 7 to August 7, on the basis that the position to which Mr. Colbert was assigned was not an established, classified position until August 7, 1978. Our Claims Division denied the claim for the period from August 7 to October 5, 1978, since Mr. Colbert had not been detailed to the GS-14 position for 120 days.

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On appeal, Mr. Colbert claims that he was assigned to an established position on January 7, 1978, but that it was not classified until August 7, 1978, due to a total unit reorganization. Mr. Colbert claims that under the applicable Air Force Regulations his assignment to an unclassified position constituted a detail and that management violated Air Force and Civil Service Regulation by failing to classify the position within 120 days. Also, Mr. Colbert claims that management had decided to make his position a GS-14 before August 1978 because the job description included duties to supervise GS-13 positions and that he received a letter from the Civilian Personnel Office on June 30, 1978, which stated that his position was being held for an incumbent GS-14 impacted by a reduction in force within the agency. However, a copy of this letter is not part of the official record submitted to this Office.

Where an employee is detailed to a higher grade position and the agency fails to seek Civil Service Commission approval to extend the detail for a period beyond 120 days, the agency must award the employee a retroactive temporary promotion and backpay if he continues to perform those higher grade duties. Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed at 56 id. 427 (1977). The Civil Service Commission (CSC) has issued implementing regulations which provide that in order to qualify for backpay the detail must be to an established position, classified under an occupational standard to a grade or pay level. CSC Bulletin No. 300-40, May 25, 1977. Therefore, although Air Force Regulations consider an assignment to an unclassified position a detail, such an assignment does not qualify for a retroactive temporary promotion and backpay under CSC Bulletin 300-40 and Comptroller General decisions. See Willie W. Cunningham, 55 Comp. Gen. 1062 (1976).

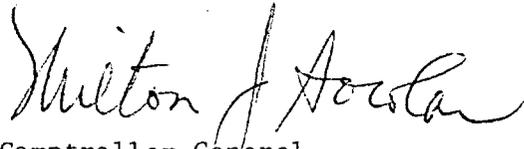
Furthermore, the classification of positions in the Government is controlled by 5 U.S.C. §§ 5101-5115 (1976) under which the CSC (now Office of Personnel Management) has promulgated regulations and can engage in review of an agency's classifications. See 5 C.F.R. Part 511 (1978). In both the statute and regulations there is no mention of a 120-day time limit for an agency to classify a new position and, therefore, the agency's action in classifying the position Mr. Colbert was detailed to was not contrary to any statute or regulation.

Finally, Mr. Colbert's allegation that the Air Force had determined prior to classification to make the position a GS-14 is not supported by the record. Therefore, Mr. Colbert was not officially detailed to

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the established GS-14 position until August 7, 1978. Mr. Colbert admits that he was relieved of his duties as of November 11, 1978. According to our decisions and CSC Bulletin 300-40, an employee is entitled to a retroactive temporary promotion and backpay only if he has been detailed to a higher grade position for 120 days without CSC approval. Since Mr. Colbert was not detailed to the GS-14 position for more than 120 days, he does not qualify for a temporary retroactive promotion after August 7, 1978.

Accordingly, the action taken by our Claims Division in denying Mr. Colbert's claim is sustained.

A handwritten signature in cursive script, reading "Milton J. Rowland".

For The Comptroller General
of the United States